

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DWAIN B. HELLECKSON,

DOCKET NO. 06-I-136

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

DIANE E. NORMAN, COMMISSIONER:

This case comes before the Commission on the motion of the Wisconsin Department of Revenue (“Department”) for summary judgment on the basis that there is no genuine issue as to any material fact and the Department is entitled to judgment as a matter of law under Wis. Stat. § 802.08 and Wis. Admin. Code § TA 1.31.

Petitioner appears *pro se* and has filed a response to the motion. Attorney Mark S. Zimmer represents the Department and has filed an affidavit with exhibits, a brief, and a supplemental affidavit in support of the motion.

Having considered the entire record, including the motion, affidavits, exhibits, and brief of the Department, and petitioner’s response, the Commission hereby finds, rules, and orders as follows:

JURISDICTIONAL AND MATERIAL FACTS

1. Petitioner filed a Wisconsin income tax return for the 2001 tax year in which he reported a Wisconsin income of -\$31,653. (Affidavit of Julie Lotto, Exh. 7.)

2. By notice dated November 10, 2005, the Internal Revenue Service (I.R.S.) reported an adjustment to the Department, adding \$101,738 in nonemployee compensation to petitioner's 2001 income. (Affidavit of Julie Lotto, Exh. 8.)

3. By notice dated January 16, 2006, the Department issued an assessment of individual income tax, interest, and penalties ("the Assessment") to petitioner in the total amount of \$6,878.70. The Assessment indicated that it was based upon an earlier adjustment made by the I.R.S. (Affidavit of Julie Lotto, Exh. 1.)

4. On February 9, 2006, petitioner returned the Assessment to the Department with the words, "Refusal for Cause, Without Dishonor and, Without Recourse to me"., stamped on each page. This document was treated as a timely filed petition for redetermination by the Department (Affidavit of Julie Lotto, Exh. 2.)

5. On May 8, 2006, the Department issued a Notice of Action to petitioner denying his petition for redetermination of the Assessment. (Affidavit of Julie Lotto, Exh. 3.)

6. On May 17, 2006, the Commission received from petitioner a copy of the Notice of Action denying his petition for redetermination with the words, "Refusal for Cause, Without Dishonor and, Without Recourse to me"., stamped on each page. This document was construed to be a petition for review of the Department's denial of petitioner's petition for redetermination. Petitioner did not enclose the \$25.00 filing fee required under Wis. Stat. § 73.01(5).

7. The Commission notified petitioner of the \$25.00 filing fee requirement by letter dated May 17, 2006, and instructed petitioner to pay the filing fee

by May 26, 2006 or risk the dismissal of his petition for review.

8. The 60-day period provided for in Wis. Stat. § 73.01(5)(a) for filing a timely petition for review of the action of the Department on petitioner's petition for redetermination expired on July 11, 2006.

9. On August 3, 2006, the Department filed a motion to dismiss the petition for review.

10. On August 9, 2006, the Commission issued a Briefing Order which ordered that petitioner's response to the motion be filed no later than September 8, 2006, and the Department's reply brief be filed no later than 14 days after petitioner's brief.

11. On August 16, 2006, the Department received from petitioner a copy of the Department's Notice of Motion and Motion to Dismiss with the words, "Refusal for Cause, Without Dishonor and, Without Recourse to me".', stamped on each page in large letters. This document was forwarded to and received by the Commission on August 17, 2006. No brief or other document has been filed by petitioner in opposition to the Motion to Dismiss filed by the Department.

12. On August 17, 2006, the Department filed a letter with the Commission stating that, due to the frivolous nature of petitioner's response, it would not be filing a reply brief.

13. On August 30, 2006, the Commission issued an Order to Pay Filing Fee, ordering that petitioner pay the \$25.00 filing fee no later than September 11, 2006.

14. On September 6, 2006, the Department received from petitioner a copy of the Commission's August 30, 2006 Order to Pay Filing Fee with the words,

“Refusal for Cause, Without Dishonor and, Without Recourse to me”’, stamped on each page in large letters. This document was forwarded to and received by the Commission on September 7, 2006.

15. Petitioner failed to pay the \$25.00 filing fee.

RULING

Summary Judgment

A summary judgment motion will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Wis. Stat. § 802.08(2). A party moving for summary judgment has the burden to establish the absence of a genuine, that is, disputed, issue as to any material fact. *Grams v. Boss*, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980).

If the moving party establishes a *prima facie* case for summary judgment, the court then examines the affidavits in opposition to the motion to see if the other party's affidavits show facts sufficient to entitle him to trial. *Artmar, Inc. v. United Fire & Casualty Co.*, 34 Wis.2d 181, 188, 148 N.W.2d 641 (1967). Once a *prima facie* case is established, “the party in opposition to the motion may not rest upon the mere allegations or denials of the pleadings, but must, by affidavits or other statutory means, set forth specific facts showing that there exists a genuine issue requiring a trial.” *Board of Regents v. Mussallem*, 94 Wis. 2d 657, 673, 289 N.W.2d 801 (1980), *citing* Wis. Stat. § 802.08(3). Any evidentiary facts in an affidavit are to be taken as true unless

contradicted by other opposing affidavits or proof. *Artmar*, 34 Wis.2d at 188. Where the party opposing summary judgment fails to respond or raise an issue of material fact, the trial court is authorized to grant summary judgment pursuant to Wis. Stat. § 802.08(3). *Board of Regents*, 94 Wis.2d at 673.

Wisconsin Statutes § 71.02(1) provides that “there shall be assessed, levied, collected and paid a tax on all net incomes of individuals . . . residing within the state” Net income is derived from gross income, after subtracting allowable statutory deductions and exemptions. *See* Wis. Stat. § 71.01(16) (defining “Wisconsin taxable income”). “Gross income” is defined as “all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes,” and includes, but is not limited to, compensation for services. Wis. Stat. § 71.03(1).

Assessments made by the Department are presumed to be correct, and the burden is on petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determination. *Edwin J. Puissant, Jr. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984); Wis. Stat. § 77.59(1).

The Department assessed petitioner's Wisconsin gross income for the year 2001 based upon an earlier adjustment made by the I.R.S. Petitioner has failed to meet his burden to prove that the Assessment is incorrect.

Failure to State a Claim

Petitioner has filed nothing with the Commission but copies of documents sent to him by the Department and the Commission with the words, “Refusal for

Cause, Without Dishonor and, Without Recourse to me”.’ stamped on each page of each document. He has never submitted any evidence or legal arguments to support his own claims or rebut the Department’s evidence or arguments.

Petitioner appears to be attempting to delay or avoid paying state income taxes for the year 2001 by simply filing stamped documents with the Department and the Commission that indicates some sort of refusal. This stamped language fails to give any indication of petitioner’s basis for his petition for review. Petitioner has been given an opportunity to state his basis for disputing his tax assessment when he was allowed to respond to respondent’s motion to dismiss, but petitioner has failed to do so. Therefore, we find that there are no circumstances under which petitioner can prevail in his petition for review. We therefore conclude that petitioner’s claim must be dismissed as a matter of law for failure to state a claim upon which relief can be granted.

Failure to Pay Filing Fee

Petitioner’s petition for review must also be dismissed for failure to comply with an order of the Commission. When petitioner filed his petition for review with the Commission, he did not enclose the \$25 filing fee required by Wis. Stat. § 73.01(5)(a). The Commission instructed petitioner to pay the filing fee by letter dated May 17, 2006. When he failed to comply with the letter, the Commission ordered petitioner to pay the filing fee on August 30, 2006. Petitioner failed to pay the filing fee.

Fivolous Petition for Review

Petitioner has made no arguments, has failed to state a claim to dispute the Department’s Assessment, and has failed to pay the filing fee when ordered to do so

by the Commission. His only statement has been the stamped message on all of his filed documents stating: "Refusal for Cause, Without Dishonor and, Without Recourse to me". This type of assertion has been consistently rejected in prior cases before the Commission and the courts. It is groundless and frivolous, and has never prevailed in Wisconsin, nor, as far as the Commission is aware, in any court in the country. See *Tracy v. Dep't of Revenue*, 133 Wis. 2d 151 (Ct. App. 1986); *Steele v. Dep't of Revenue*, WTAC Docket No. 05-I-79 (December 12, 2005); *Kroeger v. Dep't of Revenue*, WTAC Docket No. 04-I-228 (March 21, 2005); *Boon v. Dep't of Revenue*, 1999 Wisc. Tax LEXIS 7 (WTAC 1999), *aff'd on other grounds* (Milwaukee Co. Cir. Ct. 1999).

There is no genuine issue of material fact in this case, and the Department is entitled to summary judgment as a matter of law. In addition, in light of the well-established authority cited above, and petitioner's failure to support his claim by proof, precedent or logic, petitioner's claim is groundless, frivolous, and a waste of state resources. Petitioner is therefore subject to an additional assessment in the amount of \$300.00, pursuant to Wis. Stat. § 73.01(4)(am) and Wis. Admin. Code § TA 1.63.

IT IS ORDERED

1. The Department's motion for summary judgment is granted, and its action on petitioner's petition for redetermination is affirmed.

2. An additional assessment of \$300.00 is imposed on petitioner pursuant to Wis. Stat. § 73.01(4)(am) and Wis. Admin. Code § TA 1.63.

Dated at Madison, Wisconsin, this 27th day of September, 2006.

WISCONSIN TAX APPEALS COMMISSION

Jennifer E. Nashold, Chairperson

Diane E. Norman, Commissioner

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"